IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRL.MISC.NO. 12030-M OF 2001

DATE OF DECISION: SEPTEMBER 11, 2006

Prem Raj

....PETITITIONER

VERSUS

Moti Ram and others ....RESPONDENTS

CORAM: HON'BLE MR.JUSTICE SATISH KUMAR MITTAL

Present: Mr. Ashok Jindal, Advocate,
for the petitioner.

...

Petitioner Prem Raj, who is the complainant, has filed this petition under Section 482 Cr.P.C for quashing the order dated 23.8.1989 passed by the JMIC, Patiala, whereby the complaint filed by the petitioner for summoning the accused respondents has been dismissed; and the order dated November 23, 2000 passed by the Additional Sessions Judge, Patiala vide which the revision preferred by the petitioner against the said order, has also been dismissed.

2. I have heard the counsel for the petitioner and gone through the impugned orders.

3. In this case, the petitioner filed a complaint for summoning the accused respondents to face trial under Sections 447/451/454/457/379/148/149 IPC. It was alleged in the complaint that the accused forcibly broke open the lock of a room belonging to the petitioner and taken away the articles lying therein. After appreciating the preliminary evidence led by the complainant and after hearing his counsel, the trial Court dismissed the complaint while observing as under:-

"I have heard the ld. Counsel for the complainant and have also

gone through the file. The ld. counsel for the complainant has referred to the site plan mark-A in which room marked at point-J is shown to be the ownership of the complainant. He has also referred to a reply alleged to be submitted by Sh. Badri Seth in a case titled Badri Seth Vs. Moti Ram in which he had allegedly admitted that he was in possession of the room in dispute. This reply is filed by Sh. Badri Seth but the complainant has failed to prove this reply as per provision of law. Moreover, from the reply, it cannot be inferred that averments made in the reply relate to the room in question. There is no evidence on the file that the accused had broken open the room in question or that they had committed the theft of the articles lying therein or that they had forcibly occupied the said room. No such witness was either cited or examined by the complainant, in whose presence, the accused might have committed the alleged crime. Admittedly, the complainant was not present at the spot when the accused had broken open the lock or had forcibly occupied the premises in dispute. There is thus no evidence on the file from which it may be inferred that the accused had committed the crime as alleged in the complaint. Admittedly, some more litigation is pending between the parties and thus the complaint appears to have been filed for some oblique motive. No sufficient ground is, therefore, made out for summoning the accused, in the present complaint. Same is accordingly dismissed."

The revision preferred against the said order has also been dismissed by the

Additional Sessions Judge, Patiala.

4. The only contention raised by the counsel for the petitioner is that the petitioner was not provided sufficient opportunity to produce his preliminary evidence. I do not find any substance in this contention of the counsel for the petitioner. From the impugned orders, it is clear that the petitioner was given sufficient opportunity by the trial Court to produce his preliminary evidence. The complainant examined himself in preliminary evidence on 22.9.1997. Thereafter, he did not produce any evidence and his evidence was ultimately closed by order on 9.8.1999. In my opinion, both the Courts below have rightly held that the complainant had failed to make out sufficient grounds for summoning of the accused for their trial for the allegations levelled in the complaint. Moreover, in this case, no eye-witness has been examined. Civil litigation is also stated to be pending between the parties and, therefore, to put pressure on the opposite party in the civil litigation, the instant complaint appears to have been filed by the complainant. Therefor, in my opinion, no sufficient grounds are made out for summoning the accused to face the trial for the alleged offence.

5. In view of the aforesaid, I do not find any illegality or infirmity in the impugned orders. Hence, the petition is dismissed.

September 11, 2006 (SATISH KUMAR MITTAL)
vkg JUDGE